

CENTER FOR DISABILITY ACCESS
Raymond Ballister Jr., Esq., SBN 111282
Russell Handy, Esq., SBN 195058
Amanda Seabock, Esq., SBN 289900
Zachary Best, Esq., SBN 166035
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Chris Langer,
Plaintiff,

v.

Armstrong Flooring Inc., a
Delaware Corporation;
Defendants.

Case No.

**Complaint for Damages and
Injunctive Relief for Violations
of: American's with Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Chris Langer ("Plaintiff") complains of Armstrong Flooring Inc., a Delaware Corporation ("Defendant"), and alleges as follows:

PARTIES:

1. Plaintiff is a disabled individual and a member of a protected class of persons under the Americans with Disabilities Act. Plaintiff is profoundly hard of hearing and needs closed captioning to consume audio content such as movies, videos or tutorials. Plaintiff is a California resident.

2. Defendant Armstrong Flooring Inc. ("Armstrong Flooring Inc.") owned or operated Armstrong Flooring located throughout California, including in Los Angeles County in June 2021.

1 3. Defendant Armstrong Flooring Inc. (“Armstrong Flooring Inc.”) owns
2 or operates Armstrong Flooring located throughout California, including in
3 Los Angeles currently.

4 4. Defendant Armstrong Flooring Inc. owns the Armstrong Flooring
5 website, with a root domain of: <https://www.armstrongflooring.com/>, and all
6 related domains, sub-domains and/or content contained within it,
7 (“Website”) in June 2021.

8 5. Upon information and belief, Defendant Armstrong Flooring Inc.
9 owned or operated its YouTube channel in June 2021.

10 6. Upon information and belief, Defendant Armstrong Flooring Inc. owns
11 or operates its YouTube channel currently.

12 7. Defendant Armstrong Flooring Inc. owns the YouTube channel
13 currently.

14 8. Plaintiff does not know the true names of Defendants, their business
15 capacities, their ownership connection to the property and business, or their
16 relative responsibilities in causing the access violations herein complained of,
17 and alleges a joint venture and common enterprise by all such Defendants.
18 Plaintiff is informed and believes that each of the Defendants herein, is
19 responsible in some capacity for the events herein alleged or is a necessary
20 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
21 the true names, capacities, connections, and responsibilities of the
22 Defendants are ascertained.

23
24 **JURISDICTION & VENUE:**

25 9. The Court has subject matter jurisdiction over the action pursuant to 28
26 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
27 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

28 10. This court has supplemental jurisdiction over Plaintiff’s non-federal

1 claims pursuant to 28 U.S.C. § 1367 because Plaintiff's Unruh claims are
2 formed from the same case and/or controversy and are related to Plaintiff's
3 ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

4 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendant
5 is subject to personal jurisdiction in this District due to its business contacts
6 with the District.

7
8 **FACTUAL ALLEGATIONS:**

9 12. Plaintiff is hard of hearing and is a member of a protected class under
10 the ADA.

11 13. Plaintiff relies on subtitles and closed captioning to hear audio in
12 recorded content.

13 14. Armstrong Flooring Inc. operates privileges, goods or services out of a
14 physical location in California. These services are open to the public, places of
15 public accommodation, and business establishments.

16 15. The Website is a nexus between Armstrong Flooring Inc. customers and
17 the terrestrial based privileges, goods or services offered by Armstrong
18 Flooring Inc.

19 16. Armstrong Flooring Inc. offers videos on its Website to induce
20 customers to purchase its goods or services. Websites and videos are some of
21 the facilities, privileges, or advantages offered by Defendants to patrons of
22 Armstrong Flooring Inc.

23 17. Plaintiff was a prospective customer who wished to access Defendant's
24 goods or services.

25 18. While sitting bodily in California, Plaintiff visited the Website in June
26 2021 to look for information about repair of vinyl plank flooring.

27 19. When Plaintiff attempted to view video content on the Website, he
28 discovered that the videos lacked closed captioning, which made him unable

1 to fully understand and consume the contents of the videos.

2 20. Plaintiff experienced difficulty and discomfort in attempting to view
3 videos including: "Luxury Flooring with Diamon 10 Technology". As a result
4 of this inaccessibility, he was deterred from further use of the Website.

5 21. Currently, the Defendants either fail to provide an accessible website or
6 Defendants have failed to maintain in working and useable conditions those
7 website features required to provide ready access to persons with disabilities.

8 22. Despite multiple attempts to access the Website using Plaintiff's
9 computer, Plaintiff has been denied the full use and enjoyment of the facilities,
10 goods and services offered by Defendants as a result of the accessibility
11 barriers.

12 23. Plaintiff personally encountered accessibility barriers and has actual
13 knowledge of them.

14 24. By failing to provide an accessible website, the Defendants denied
15 Plaintiff full and equal access to the facilities privileges or advantages offered
16 to their customers.

17 25. Plaintiff has been deterred from returning to the website as a result of
18 these prior experiences.

19 26. The failure to provide accessible facilities created difficulty and
20 discomfort for the Plaintiff.

21 27. If the Website had been constructed equally accessible to all individuals,
22 Plaintiff would have been able to navigate the website and avail himself of its
23 goods and/or services.

24 28. Additionally, Plaintiff is a tester in this litigation and seeks future
25 compliance with all federal and state laws. Plaintiff will return to the Website
26 to avail himself of its goods and/or services and to determine compliance with
27 the disability access laws once it is represented to him that Armstrong Flooring
28 Inc. and Website are accessible.

1 29. Plaintiff is currently deterred from doing so because of Plaintiff's
2 knowledge of the existing barriers and uncertainty about the existence of yet
3 other barriers on the Website. If the barriers are not removed, Plaintiff will
4 face unlawful and discriminatory barriers again.

5 30. The barriers identified above violate easily accessible, well-established
6 industry standard guidelines for making digital content accessible to people
7 with hearing-impairments to access websites. Given the prevalence of
8 websites that have implemented these standards and created accessible digital
9 content, it is readily achievable to construct an accessible website without
10 undue burden on Armstrong Flooring Inc. or a fundamental alteration of the
11 purpose of the Website.

12 31. Compliance with W3C Web Content Accessibility Guidelines
13 ("WCAG") 2.0 AA standards are a viable remedy for these deficiencies and a
14 standard that has been adopted by California courts for website accessibility.

15 32. It's been established that failure to remove inaccessible website
16 conditions violates the ADA and California law and requiring compliance with
17 industry access standards is a remedy available to the Plaintiff.

18 33. The website content was intentionally designed, and based on
19 information and belief, it is the Defendants' policy and practice to deny
20 Plaintiff access to the website, and as a result, deny the goods and services that
21 are otherwise available to patrons of Armstrong Flooring Inc.

22 34. Due to the failure to construct and operate the website in line with
23 industry standards, Plaintiff has been denied equal access to Defendant's
24 stores and the various goods, services, privileges, opportunities and benefits
25 offered to the public by Armstrong Flooring Inc.

26 35. Closed captioning can be provided at little cost, sometimes free or mere
27 dollars per minute of video content.

28 36. Closed captioning is supported by numerous third party hosting

1 companies, including the one chosen by Defendants, and can be provided at
2 little cost, sometimes free or mere dollars per minute of video content.

3 37. Given the nature of the barriers and violations alleged herein, the
4 Plaintiff alleges, on information and belief, that there are other violations and
5 barriers on the Website that relate to his disability. In addition to the barriers
6 he personally encountered, Plaintiff intends to seek removal of all barriers on
7 the Website that relate to his disability. See *Doran v. 7-Eleven* (9th Cir. 2008)
8 524 F.3d 1034 (holding that once a plaintiff encounters one barrier, they can
9 sue to have all barriers that relate to their disability removed regardless of
10 whether they personally encountered the barrier).

11 38. Plaintiff will amend the complaint, to provide further notice regarding
12 the scope of the additional demanded remediation in the event additional
13 barriers are uncovered through discovery. However, please be on notice that
14 the plaintiff seeks to have all barriers related to his disability remedied.

15
16 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
17 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
18 Defendants.) (42 U.S.C. section 12101, et seq.)

19 39. Plaintiff re-pleads and incorporates by reference, as if fully set forth
20 again herein, the allegations contained in all prior paragraphs of this
21 complaint. Defendant is a public accommodation with the definition of Title
22 III of the ADA, 42 USC § 12181.

23 40. The website provided by the Defendant is a service, privilege or
24 advantage and extension of Armstrong Flooring Inc. physical presence and
25 terrestrial services.

26 41. When a business provides services such as a website, it must provide an
27 accessible website.

28 42. Here, access to an accessible website has not been provided. A failure to

1 provide an accessible website is unlawful discrimination against persons with
2 disabilities.

3 43. Under the ADA, it is an act of discrimination to fail to ensure that the
4 privileges, advantages, accommodations, facilities, goods and services of any
5 place of public accommodation is offered on a full and equal basis by anyone
6 who owns, leases, or operates a place of public accommodation. *See*: 42 U.S.C.
7 § 12182(a). Discrimination is defined, inter alia, as follows: “A failure to make
8 reasonable modifications in policies, practices, or procedures, when such
9 modifications are necessary to afford goods, services, facilities, privileges,
10 advantages, or accommodations to individuals with disabilities, unless the
11 accommodation would work a fundamental alteration of those services and
12 facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).”

13 44. Here, the failure to ensure that the accessible facilities were available
14 and ready to be used by the plaintiff is a violation of the law.

15 45. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
16 set forth and incorporated therein, Plaintiff requests relief as set forth below.

17
18 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
19 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
20 Code § 51-53.)

21 46. Plaintiff repleads and incorporates by reference, as if fully set forth
22 again herein, the allegations contained in all prior paragraphs of this
23 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
24 that persons with disabilities are entitled to full and equal accommodations,
25 advantages, facilities, privileges, or services in all business establishment of
26 every kind whatsoever within the jurisdiction of the State of California. Cal.
27 Civ. Code §51(b).

28 47. The Unruh Act provides that a violation of the ADA is a violation of the

1 Unruh Act. *Cal. Civ. Code* § 51(f).

2 48. Defendants' acts and omissions, as herein alleged, have violated the
3 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
4 rights to full and equal use of the accommodations, advantages, facilities,
5 privileges, or services offered.

6 49. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
7 discomfort or embarrassment for the plaintiff, the defendants are also each
8 responsible for statutory damages, i.e., a civil penalty. *Cal. Civ. Code* §
9 55.56(a)-(c).

10 50. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
11 set forth and incorporated therein, Plaintiff requests relief as set forth below.

12
13 **PRAYER:**

14 Wherefore, Plaintiff prays that this Court award damages and provide
15 relief as follows:

16 1. A Declaratory Judgment that at the commencement of this action
17 Defendants were in violation of the requirements of the ADA due to
18 Defendants' failures to take action to ensure that its websites were fully
19 accessible to and independently usable by hearing-impaired individuals,
20 including providing closed-captioning on all video content containing audio
21 elements.

22 2. For equitable nominal damages for violation of civil rights. See
23 Uzuegbunam v. Preczewski, 141 S.Ct. 792 (2021) and any other equitable
24 relief the Court finds appropriate.

25 3. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction
26 enjoining Defendants from violating the ADA with respect to its website,
27 including a requirement that all current and future audio-video content be
28 closed captioned at the time of upload.

1 4. Damages under the Unruh Civil Rights Act § 51¹, which provides for
2 actual damages and a statutory minimum of \$4,000 for each offense.

3 5. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and *Cal. Civ. Code* § 52.

5
6 Dated: June 24, 2021

CENTER FOR DISABILITY ACCESS

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26


By: _____

Russell Handy, Esq.
Attorney for Plaintiff

27 ¹ Note: the plaintiff is not invoking section 55 of the California Civil Code and
28 is not seeking injunctive relief under the Disabled Persons Act at all.